Nos. 87-826, 87-1101

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

JEROME F. GOLDBERG and ROBERT McTIGUE,
Appellants,

v.

ROGER D. SWEET, DIRECTOR OF THE ILLINOIS DEPARTMENT OF REVENUE, et al.,
Appellees.

GTE SPRINT COMMUNICATIONS CORPORATION,
Appellant,

v.

ROGER D. SWEET, DIRECTOR OF THE ILLINOIS DEPARTMENT OF REVENUE, et al.,
Appellees.

On Appeal From The Supreme Court Of Illinois

CONSOLIDATED MOTION TO AFFIRM

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Appellees Roger D. Sweet, Director of the Illinois Department of Revenue and Jerome Cosentino, Treasurer of the State of Illinois (the "Department of Revenue"), move to affirm the decision of the Illinois Supreme Court

pursuant to United States Supreme Court Rule 16.[1] In the decision below, the Illinois Supreme Court properly applied this Court's precedents. The questions presented by the appeals are so unsubstantial that there is no need for further argument.

STATEMENT OF THE CASE

Appellants Jerome Goldberg and Robert McTigue filed suit in the Circuit Court of Cook County, Illinois, alleging that Section 4 of the Illinois Telecommunications Excise Tax Act, Ill. Rev. Stat. ch. 120, paras. 2001-2104 (1986) (the "Act"), violated the Commerce Clause of the Constitution of the United States. U.S. Const. art. I, § 8, cl. 3. Appellant GTE Sprint Communications Corporation ("GTE"), a defendant in the Circuit Court suit, filed a cross-claim against the Department of Revenue based on the same alleged constitutional infirmity.[2] Section 4 of the Act states:

> A tax is imposed upon the act or privilege of originating in this State or receiving in this State interstate telecommunications by a person in this State at the rate of 5% of the gross charge for such tele-

[1] This Motion to Affirm responds to the Jurisdictional Statements filed by Jerome F. Goldberg and Robert McTigue in Case No. 87-826 and GTE Sprint Communications Corporation in Case No. 87-1101. These Jurisdictional Statements shall be referred to as the "Goldberg Jurisdictional Statement" and the "GTE Jurisdictional Statement," respectively. The appendices attached to the Goldberg Jurisdictional Statement shall be referred to as "Goldberg App."

[2] Appellants also raised due process and equal protection claims under the United States and Illinois Constitutions which they have abandoned on their appeals.

> communications purchased at retail from a retailer by such person. To prevent actual multi-state taxation of the act or privilege that is subject to taxation under this paragraph, any taxpayer, upon proof that that taxpayer has paid a tax in another state on such event, shall be allowed a credit against the tax imposed in this Section 4 to the extent of the amount of such tax properly due and paid in such other state. However, such tax is not imposed on the act or privilege to the extent such act or privilege may not, under the Constitution and statutes of the United States, be made the subject of taxation by the State.

Ill. Rev. Stat. ch. 120, para. 2004 (1986).[3]

On cross motions for summary judgment seeking a determination of the constitutionality of Section 4 of the Act, the Circuit Court of Cook County, Illinois, held that this provision violated the Commerce Clause of the United States Constitution. (Goldberg App. at 18a-24a.) Thereafter, in accordance with the Illinois Supreme Court Rules, the Department of Revenue took a direct appeal of the Circuit Court's decision to the Illinois Supreme Court. On June 24, 1987, the Illinois Supreme Court issued an order reversing the Circuit Court and finding the Act constitutional. (Goldberg App. at 17a.) On July 27, 1987, the Illinois Supreme Court issued an opinion explaining its June 24, 1987 order. *Goldberg v. Johnson*, 117 Ill. 2d 493, 512 N.E.2d 1262 (1987). (Goldberg App. at 4a-16a.) As is demonstrated below, the Illinois Supreme Court properly applied the law, and further review of this straightforward statute is not warranted.

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[3] The Act, in Section 2, defines "gross charge" as "the amount paid . . ." and "amount paid" as "the amount charged to the taxpayer's service address in this State regardless of where such amount is billed or paid." Ill. Rev. Stat. ch. 120, para. 2002(a), (b) (1986).

ARGUMENT

A. The Act Taxes Illinois Activity.

The events that give rise to the tax occur in Illinois. A tax is imposed only when (i) a person in Illinois originates or receives a telephone call; (ii) a person in Illinois decides to charge the cost of that call to an Illinois service address; and (iii) the call is purchased at retail in Illinois. Although these activities take place in Illinois, they have sufficient interstate implications so that the tax imposed by the Act is subject to scrutiny under the standards set forth by this Court in *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, *reh'g denied*, 430 U.S. 976 (1977) and its progeny. The Illinois Supreme Court's definition of the "taxable event" demonstrates that it understood that acts which are local in nature can have interstate implications:

> Since the taxable event in this case is the "act or privilege of originating or receiving interstate telecommunications * * * in this State," it is clear that the taxable event is linked inextricably to interstate activity—interstate communication.

512 N.E.2d at 1265. (Goldberg App. at 9a.) While the activity of originating or receiving a telephone call is "linked" to interstate commerce, it is not interstate activity in and of itself.

Appellants' Jurisdictional Statements mischaracterize the Illinois Supreme Court's construction of the Act and disregard the practical application of the Act by arguing that the Act places a direct tax on interstate telephone calls. Appellants' analysis ignores the essential Illinois economic activity the Act requires in order to impose any tax. Appellants Goldberg and McTigue argue that "the tax is un-

questionably imposed on the interstate telephone call itself." (Goldberg Jurisdictional Statement at 12 n.6.) Appellant GTE states that "the tax has clearly been laid on inherently interstate activity." (GTE Jurisdictional Statement at 9.) Appellants choose to completely ignore the fact that both the Act and the Illinois Supreme Court define the taxable event to include the origination or receipt in Illinois of a telephone call—singularly local events.[4]

In evaluating the interplay between state taxation and the Commerce Clause, this Court has repeatedly stated that the practical effect of a tax, rather than its name or label, should be utilized. *Commonwealth Edison Co. v. Montana*, 453 U.S. 609, 615-17, *reh'g denied*, 453 U.S. 927 (1981); *American Trucking Ass'ns, Inc. v. Scheiner*, ____ U.S. ____, 107 S. Ct. 2829, 2846 (1987). The practical effect of the Act can be shown by a series of examples. Under the Act, a caller who makes a direct dial call from Illinois to California, and is charged for that call at an Illinois service address, is subject to taxation. Similarly, a person in Illinois who accepts a collect call from California which is charged to an Illinois service address, is subject to taxation. However, a person who makes a collect call from Illinois to California, and thus is not charg-

[4] Appellant GTE further confuses the issues by arguing that "the tax cannot be deemed to tax a local 'sales' transaction, as it explicitly taxes long distance calls even when they are *billed and/or are paid for outside Illinois.*" (Emphasis in original.) (GTE Jurisdictional Statement at 10.) A simple example displays the fallacy in this argument. When one uses a credit card to purchase items during an out-of-state trip, one may be required to pay a sales tax to the state in which the purchase is made. The fact that the credit card bill is thereafter received in another state and paid there does not prevent, as GTE has argued, the tax from being a tax on a local sale.

ing the call to a service address in Illinois, is not subject to taxation. A person making a long distance directory assistance call originated in Illinois is taxed only when there is a charge to an Illinois service address. As is demonstrated by the foregoing examples, it is not the existence of a telephone call that triggers the tax. No tax arises, under the Act, in the absence of a decision by a person participating in a telephone call while in Illinois to have the call charged to an Illinois service address.

Appellants Goldberg and McTigue also argue that Illinois is taxing the "entire call," thereby taxing interstate activity. It is important to recognize that the Act has the effect of taxing the entire charge for the call only when a telephone company elects to place the entire charge on the Illinois participant. If a telephone company chooses to divide the charges for telephone services between the originator and the recipient, the Act would tax only the amount charged to an Illinois service address, leaving untaxed the amount charged in another state.

B. The Illinois Supreme Court Followed This Court's Recent Precedents.

The Act imposes an uncomplicated tax which relates directly to Illinois economic activity. It is designed to satisfy the established precedents of this Court. The most recent decisions of the Supreme Court regarding the relationship of the Commerce Clause to state taxes, which were decided subsequent to the enactment of the Act, provide additional support for the constitutionality of the Act.

In 1987, this Court rendered two opinions deciding challenges to state taxes under the Commerce Clause. In *Tyler Pipe Industries, Inc. v. Washington State Department of Revenue*, ___ U.S. ___, 107 S. Ct. 2810 (1987)

and *American Trucking Ass'ns, Inc. v. Scheiner*, ____ U.S. ____, 107 S. Ct. 2829 (1987), this Court struck down Washington and Pennsylvania statutes as unconstitutional burdens on interstate commerce. The infirmities of those statutes are not present in the Act, but the reasoning of this Court was relied upon by the Illinois Supreme Court in upholding the Act.

In *Tyler Pipe*, this Court found a Washington taxing scheme, which had the practical effect of favoring Washington manufacturers, unconstitutional. The Act contains no such local favoritism. The Illinois Supreme Court, however, utilized the logic of *Tyler Pipe* in determining that the Act did not impose improper multiple taxation. Further, the Illinois Supreme Court properly analyzed a credit provision contained in the Act on the basis of *Tyler Pipe*, 512 N.E.2d at 1267. (Goldberg App. at 13a.)

In *American Trucking*, this Court held unconstitutional certain flat taxes on trucks which traveled in the Commonwealth of Pennsylvania. This Court found that the Pennsylvania taxing scheme failed the internal consistency test. This test is used to determine the existence of discrimination against interstate commerce by measuring whether a tax treats interstate and intrastate commerce equally. If the tax imposed by Pennsylvania were imposed in all fifty states, a truck which traveled in all states would pay fifty times more tax than a truck which stayed in Pennsylvania, even if each truck traveled the same number of miles. Therefore, the Pennsylvania statutes imposed an impermissible burden on interstate commerce. Conversely, if the Act were imposed in every state, a caller placing interstate telephone calls from each of the fifty states would pay exactly the same tax as a caller who placed interstate calls with identical charges exclusively from Illinois. Nothing in the Act interdicts the holding of *American Trucking*.

This appeal presents no special issues which need to be addressed by this Court. The Act imposes a garden variety tax on local activity which has interstate implications. It has none of the infirmities of the taxes reviewed in *Tyler Pipe* or *American Trucking* and fully satisfies this Court's established tests.

C. The Act Satisfies the Requirements Imposed by *Complete Auto Transit, Inc. v. Brady.*

In *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, *reh'g denied*, 430 U.S. 976 (1977), this Court set forth a four part test to apply to taxes attacked as undue burdens on interstate commerce. The *Complete Auto* test, as it has been applied, holds that a tax will not violate the Commerce Clause so long as it:

1. Is applied to an activity with a substantial nexus with the taxing state;

2. Is fairly apportioned;

3. Does not discriminate against interstate commerce; and

4. Is fairly related to the services provided by the state imposing the tax.

430 U.S. at 278-79.

Appellants have conceded that there is nexus. As is shown below, there is no substantial question regarding apportionment, discrimination, or fair relation.

1. The Act Imposes a Fairly Apportioned Tax.

Fair apportionment can include 100% apportionment in the taxing state. *Commonwealth Edison Co. v. Montana*, 253 U.S. 609, *reh'g denied*, 453 U.S. 927 (1981). *Complete Auto* does not require that a tax imposed on a particular

aspect of interstate commerce be spread among several states. Flexibility in apportionment is allowed so long as intrastate commerce is not favored over interstate commerce. *Container Corporation of America v. Franchise Tax Board*, 463 U.S. 159, 180-84, *reh'g denied*, 464 U.S. 909 (1983).

The propriety of 100% apportionment is illustrated by typical sales and use tax schemes employed by many states. This Court has validated the constitutionality of such taxes. *National Geographic Society v. California Board of Equalization*, 430 U.S. 551, 555 (1977). Here, the events that give rise to the tax occur exclusively in Illinois. The Act places no greater burden on interstate commerce than does a tax on the purchase of a tangible item apportioned 100% to the State where the item is purchased.

The most directly applicable decision of this Court is *Commonwealth Edison Co. v. Montana*, 453 U.S. 609, *reh'g denied*, 453 U.S. 927 (1981). There, four Montana coal producers and eleven of their out-of-state utility customers filed suit seeking refunds for the payment of a state tax on the severance of coal. The tax was "levied at varying rates depending on the value, energy content, and method of extraction of the coal, and may equal, at a maximum, 30% of the 'contract sales price.'" *Id.* at 613. The *Complete Auto* test was used to uphold this tax. With respect to fair apportionment, this Court stated: "Nor is there any question here regarding apportionment or potential multiple taxation, for as the state court observed, 'the severance can occur in no other state' and 'no other state can tax the severance.'" *Id.* at 617. The Supreme Court validated a tax which was 100% apportioned to Montana, even though the amount of the tax could not be finally determined without the participation of an out-of-state purchaser to establish the "contract sales price."

Commonwealth Edison is controlling. Here, although the election by a person in Illinois to engage in the act of originating or receiving an interstate telephone call has interstate implications, the tax imposed is fairly apportioned because it is based upon activity by a person in Illinois and charges incurred in Illinois. It bears repeating that the Act imposes a tax only where (i) a call is originated or received in Illinois; (ii) a call is charged to an Illinois service address; and (iii) the call is purchased at retail in Illinois. The fact that the rate of the Illinois tax is a percentage of the charges which are related to out-of-state activity is sufficient to subject the tax to Commerce Clause scrutiny. However, this method of determining the tax imposed by the Act is no different than the method employed by the Montana tax, approved in *Commonwealth Edison*, which was based on the value of the contract sales price to out-of-state utilities.

2. The Tax Imposed by the Act Does Not Discriminate Against Interstate Commerce.

Complete Auto requires that a state taxing statute not discriminate against interstate commerce. In *Boston Stock Exchange v. State Tax Commission*, 429 U.S. 318 (1977), this Court found a New York taxing scheme which imposed a higher tax on interstate securities transactions than on intrastate transactions discriminatory. The Court characterized the tax as the type of local favoritism that the Commerce Clause was designed to prevent. *Id.* at 329. The Act passes this important anti-discrimination test. Purchasers of intrastate telephone calls are not favored. An identical tax rate of 5% is imposed on purchasers of interstate and intrastate telephone calls and there are no exemptions or exceptions favoring intrastate telephone calls. Ill. Rev. Stat. ch. 120, para. 2003 (1986).

In *Commonwealth Edison*, this Court recognized that taxes which impose the same rate without regard to whether the transaction crosses state lines do not result in discrimination.

> [T]he Montana tax is computed at the same rate regardless of the final destination of the coal, and there is no suggestion here that the tax is administered in a manner that departs from this evenhanded formula.
>
> * * *
>
> Instead, the gravamen of appellants' claim is that a state tax must be considered discriminatory for purposes of the Commerce Clause if the tax burden is borne primarily by out-of-state consumers.
>
> * * *
>
> The premise of our discrimination cases is that "[t]he very purpose of the Commerce Clause was to create an area of free trade among the several States." Under such a regime, the borders between the States are essentially irrelevant. As the Court stated in *West v. Kansas Natural Gas Co.*, 221 U.S. 229, 255, 31 S.Ct. 564, 571, 55 L.Ed. 716 (1911), " 'in matters of foreign and interstate commerce there are no state lines.' " Consequently, to accept appellants' theory and invalidate the Montana tax solely because most of Montana's coal is shipped across the very state borders that ordinarily are to be considered irrelevant would require a significant and, in our view, unwarranted departure from the rationale of our prior discrimination cases.

453 U.S. at 618-19 (citations omitted).

Recent Supreme Court opinions have also demanded that state taxes be internally consistent so as to avoid discrimination against interstate commerce. In *Armco v. Hardesty*, 467 U.S. 638, 644, *reh'g denied*, 469 U.S. 912 (1982), this Court explained that the doctrine of internal consistency requires that if the tax at issue were imposed

by each state, interstate commerce would be subjected to no greater burden than intrastate commerce. The Act passes the *Armco* internal consistency test. If each, or any, of the other states enacted the tax in question—a tax on a person originating or receiving a call in that state and charging the call to a service address in that state—there would be no discriminatory impact upon interstate commerce.

Appellants also discuss a number of taxes now being imposed by other jurisdictions from which they conclude that the threat of multiple taxation is real, not imagined. This argument is insufficient to strike down the Act because no other jurisdiction has an adequate basis to tax the person who is in Illinois during the telephone call and charges the telephone call to an Illinois address. The fact that there may be more than one tax on different taxpayers involved in an interstate chain of events does not render the Act unconstitutional. This Court recognized in *Tyler Pipe* that taxing different aspects of the same activity is permissible when it stated:

> This apportionment argument rests on the erroneous assumption that through the B & O tax, Washington is taxing the unitary activity of manufacturing and wholesaling. We have already determined, however, that the manufacturing tax and wholesaling tax are not compensating taxes for substantially equivalent events in invalidating the multiple activities exemption. Thus, the activity of wholesaling—whether by an in-state or an out-of-state manufacturer—must be viewed as a separate activity conducted wholly within Washington that no other State has jurisdiction to tax. See *Moorman Mfg. Co. v. Bair*, 437 U.S., at 280-281, 98 S. Ct., at 2348-2349 (gross receipts tax on sales to customers within state would be "plainly valid"); *Standard Pressed Steel Co. v. Washington Revenue Dept.*, 419 U.S., at 564, 95 S. Ct., at 709

(selling tax measured by gross proceeds of sales is "apportioned exactly to the activities taxed").

____ U.S. ____, 107 S. Ct. at 2822. The Act does not impose a multiple burden because the Illinois activity which is taxed is separate from the activity which other states might try to reach.

Finally, the Act itself contains a provision which allows any taxpayer who actually suffers a multiple taxation burden to obtain a credit. There is no reason why this provision should not be treated the same as the credit provisions in sales and use tax schemes which have been upheld by this Court. Most recently, in *Tyler Pipe* this Court acknowledged the validity of credit provisions such as the one in the Act. 107 S. Ct. at 2819 n.13.

Appellant GTE rejects the credit procedure as creating an excessive administrative burden and claims that the impact of the credit provision will vary with the rates imposed by other taxing authorities, thereby creating an imperfect solution. The credit provision is not complex, but is standard for state taxes. The fact that the credit is in the amount of the tax paid to some other state is wholly consistent with the type of credit which was discussed with approval in *Tyler Pipe*, 107 S. Ct. at 2819. With the credit provision in place, the threat of any person bearing a multiple tax burden is eliminated.[5]

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[5] This case does not present an appropriate vehicle for challenging the effectiveness of the credit provision of the Act because the existence of actual multiple burdens is not demonstrated in the record. While the record discloses municipal ordinances and state statutes from states other than Illinois, the actual application of those foreign ordinances and the credit provision to a particular taxpayer in Illinois and the resulting impermissible multiple burden is not shown in this record.

Appellants Goldberg and McTigue argue that there will be multiple taxation because out-of-state participants in conversations with Illinois callers could have a tax imposed on a telephone call which is covered by the Act. Appellants argue that this would lead to discrimination against interstate telephone callers because both participants in the interstate telephone call would be taxed while only one person would be taxed in an Illinois intrastate call. Appellants argument is flawed because it hypothesizes the adoption of a tax in every state other than Illinois. If both the Act and the hypothetical tax on the second participant are assumed to have been adopted in every state including Illinois, as they must be for such a hypothetical analysis under the internal consistency test, no discrimination exists.

The Act is not discriminatory because it imposes the same rate of tax on intrastate and interstate calls and because it passes the internal consistency test developed by this Court.

3. The Tax Imposed by the Act is Fairly Related to Services Provided by Illinois.

Commonwealth Edison Co. v. Montana, 453 U.S. 609, *reh'g denied*, 453 U.S. 927 (1981), establishes the standard for determining whether a state tax is fairly related to services provided by the state. *Commonwealth Edison* validated a Montana tax on the severance of coal which could be at a rate as high as 30% of the contract sales price. Here, Illinois imposes a tax equal to 5% of the purchase price. The Supreme Court recognized in *Commonwealth Edison* that the tax was "a general revenue tax" as to which the state had "considerable latitude." 453 U.S.

621-23.[6] In evaluating such taxes, this Court has made it clear that there need not be a strict relationship between the amount of tax paid and the benefit to the individual taxpayer:

> This Court has indicated that States have considerable latitude in imposing general revenue taxes . . . . [T]here is no requirement under the Due Process Clause that the amount of general revenue taxes collected from a particular activity must be reasonably related to the value of the services provided to the activity.
>
> * * *
>
> "A tax is not an assessment of benefits. It is, as we have said, a means of distributing the burden of the cost of government. The only benefit to which the taxpayer is constitutionally entitled is that derived from his enjoyment of the privileges of living in an organized society, established and safeguarded by the devotion of taxes to public purposes.
>
> Any other view would preclude the levying of taxes except as they are used to compensate for the burden on those who pay them, and would involve abandonment of the most fundamental principle of government—that it exists primarily to provide for the common good."

453 U.S. at 622-24 (citations omitted).

The Act is based on the taxpayer's activity in Illinois. The Act does not impose a tax on a party outside of Illinois and is related to the activity of the person who incurs the tax by charging a telephone call to a service address in Illinois. It is based on the value the person in Illinois places upon this activity measured by the amount

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[6] Section 1 of the Act provides that "the net proceeds from the taxes imposed by this Act shall be used for the support of the General Revenue Fund." Ill. Rev. Stat. ch. 120, para. 2001 (1986).

he is willing to pay for a telephone call. It is, therefore, fairly related to activity in Illinois.

4. If the Tax Imposed by the Act is a Tax on Telephone Calls, It is Properly Apportioned.

Accepting for purposes of argument the construction of the Act argued for by all Appellants, that the Act is a tax directly on the telephone call, the Illinois statute is constitutional. Appellants' reading of the Act has no effect on the nexus, discrimination or fair relation tests, all of which are satisfied in the same manner as if the tax is viewed as one on Illinois activity.

However, with respect to the apportionment test, if Illinois is viewed as taxing interstate telephone calls, it would have sufficient nexus to reach all telecommunications which (i) originate in, (ii) are received in, or (iii) pass through Illinois. Viewed in this context, the Act is an apportioned tax on all interstate calls touching Illinois using a single apportionment factor, sales.

A tax apportioned by sales passes relevant constitutional standards. In *Moorman Mfg. Co. v. Bair*, 437 U.S. 267, *reh'g denied*, 439 U.S. 885 (1978), an Illinois corporation with sales in Iowa challenged Iowa's single factor sales method of apportionment for state income taxes. In rejecting this challenge, the Supreme Court acknowledged that a tax on activity relating exclusively to plaintiff's sales in Iowa would not run afoul of the Commerce Clause apportionment standard:

> Finally, it would be an exercise in formalism to declare appellant's income tax assessment unconstitutional based on speculative concerns with multiple taxation. For it is evident that appellant would have had no basis for complaint if, instead of an income tax, Iowa had imposed a more burdensome gross-re-

> ceipts tax on the gross receipts from sales to Iowa customers. In *Standard Pressed Steel Co. v. Washington Revenue Dept.*, 419 U.S. 560, 95 S. Ct. 706, 42 L. Ed. 2d 719, the Court sustained a tax on the entire gross receipts from sales made by the taxpayer into Washington State. Because receipts from sales made to States other than Washington were not included in Standard Pressed Steel's taxable gross receipts, the Court concluded that the tax was " 'apportioned exactly to the activities taxed.' " *Id.*, at 564.

437 U.S. at 280. This very point was recently reiterated by this Court in *Tyler Pipe Industries, Inc. v. Washington State Department of Revenue*, ____ U.S. ____, 107 S. Ct. 2810, 2822 (1987).

Moreover, the apportionment method adopted by Illinois need not eliminate all possibilities of multiple taxation.[7] In *Moorman Mfg.*, plaintiff argued that because other states used a three factor formula, and Iowa used only a sales factor, the Iowa tax was unfairly apportioned and would lead to multiple taxation. This Court rejected these arguments and recognized perfect apportionment was not required. *Id.* at 278.

Thus, even when the Illinois tax is viewed as one imposed directly on interstate telephone calls, it is fairly apportioned because it chooses sales, an accepted factor, to apportion its tax on the universe of all telephone calls subject to taxation. Apportionment formulas based on sales have been consistently upheld by this Court, and the Act requires no different ruling.

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[7] The only type of tax which could conceivably satisfy Appellants would be a tax apportioned on a call by call basis. This is not required. In *Container Corp. of America v. Franchise Tax Board*, 463 U.S. 159, 181-84, *reh'g denied*, 464 U.S. 909 (1983), this Court held that such detailed transactional accounting is not necessary to pass the apportionment test.

CONCLUSION

The Act imposes a traditional tax on activity which occurs within Illinois. The decision of the Illinois Supreme Court upholding the constitutionality of the Act properly applied the precedents of this Court. There is no need for further argument. The decision of the Illinois Supreme Court should be affirmed.

Respectfully submitted,

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